

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-054764

04/20/2015

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
W. Tenoever
Deputy

AMY OVERMAN

JACK LEVINE

v.

KATHRYN RYAN

MICHAEL S FERRARO

RULING

Before the Court are several post-judgment motions. The Court has considered all of the filings, and the record in this case.

As to the question of the “real party in interest” for purposes of the judgment for costs, the Court finds that Amy Overman brought and maintained this suit as both personal representative of the Estate of Marilyn Dennis under Title 14 and statutory representative of herself and her siblings pursuant to A.R.S. section 12-612(A). See Solomon v. Harman, 107 Ariz. 426, 489 P.2d 236 (1971). The Estate of Marilyn Dennis and Ms. Overman as statutory wrongful-death representative are jointly and severally liable on the judgment for costs. Ms. Overman presumably has a right of contribution or indemnity from her siblings, however, since in her statutory representative capacity she was acting on her siblings’ behalf as well as her own.

IT IS THEREFORE ORDERED that the Motion to Amend Judgment filed on February 10, 2015 is denied.

As to the question of the validity of the offer of proof, Greenawald v. Ford Motor Company, 196 Ariz. 123, 993 P.2d 1087 (App. 1999), holds that a Rule 68 offer that lacks an apportionment as to wrongful death beneficiaries is not sufficiently specific and is therefore unenforceable. Id. at para. 10. The Court is unable to distinguish that case from this one.

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IT IS THEREFORE ORDERED the Motion to Amend Judgment filed on February 18, 2015 is granted. The judgment entered on February 4, 2015 is hereby stayed. The defendant shall have ten days, from the date on which the Clerk transmits this order to the parties, to file an amended Statement of Costs limited to those costs that would ordinarily be recoverable under A.R.S. section 12-322. The Court will then issue an amended judgment that includes taxable costs but not Rule 68 sanctions.

IT IS FURTHER ORDERED the Motion for New Trial is denied. The Motion for Leave to Take Statements Under Oath is denied. Plaintiff's Motion for Stay of Judgment is denied as to the Order to Pay Costs and Attorney's fees entered February 11, 2015. The request for oral argument is denied.